COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

14-P-1977

SEAN MURPHY

vs.

STEVEN SOUZA[1] & others.[2]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Proceeding pro se, Sean Murphy, an inmate committed to the care and custody of the Bristol County sheriff's office, appeals from the dismissal of his complaint for failure to exhaust his administrative remedies. See Mass.R.Civ.P. 12(b)(6), 365 Mass. 754 (1974). We affirm.

Review of the allowance of the defendants' motion to dismiss is de novo.[3] See Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011).

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[1] In his former capacity as superintendent of the Bristol County house of correction and jail.

[2] Marcy Haaland, in her former capacity as Major; James Rioux, in his former capacity as grievance coordinator; John Ledo, in his capacity as correction officer; and Lorraine Rousseau, in her capacity as attorney.

[3] In the course of our review, we have discounted any facts appearing in Murphy's briefs that were not properly supported by an appropriate record reference. See Marnerakis v. Phillips, Silver, Talman, Aframe & Sinrich, P.C., 445 Mass. 1027, 1028 n.5

In count 1 of his verified complaint, Murphy sought certiorari review of certain disciplinary proceedings; and in counts 2 through 6, he raised five discrete claims.[4] The claims were subject to a mandatory exhaustion requirement under State and Federal law.[5] See G. L. c. 127, §§ 38E and 38F; and 42 U.S.C. § 1997e(a) (2000), the Federal Prison Litigation Reform Act (PLRA). It is undisputed that Murphy, an experienced pro se litigator, failed to file grievances with respect to any of these matters before filing this lawsuit. Dismissal of these claims was thus required. See Ryan v. Pepe, 65 Mass. App. Ct. 833, 839 (2006) ("Both Federal and State law now expressly require inmates to exhaust available grievance procedures before going to court"); Ryan v. Holie Donut, Inc., 82 Mass. App. Ct. 633, 641 (2012) (failure to pursue mandatory administrative process "creat[ed] a conclusive affirmative defense requiring dismissal"); Jones v. Bock, 549 U.S. 199, 211 (2007) ("[E]xhaustion is mandatory under the PLRA and . . . unexhausted claims cannot be brought in court"); Medina-Claudio v.

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(2006). We have not considered any issues and claims that were either raised for the first time on appeal or asserted in the proposed amended complaint rejected by the judge. See Cariglia v. Bar Counsel, 442 Mass. 372, 379 (2004).

[4] Murphy alleged that the defendants unlawfully: (1) denied him the use of a word processor; (2) opened and read his legal mail; (3) retaliated against him for filing a grievance about the loss of his flash drive; (4) coerced him into signing an arbitrary contract; and (5) charged him fees for photocopies.

[5] Murphy did not argue that any of the State statutory exceptions to the exhaustion requirement applied. See G. L. c. 127, § 38F.

Rodriguez-Mateo, 292 F.3d 31, 36 (1st Cir. 2002) ("Exhaustion subsequent to the filing of suit will not suffice").

To the extent that Murphy claimed error in the implicit denial of his motion to amend the complaint, no amendment could have cured the exhaustion defects. See Jessie v. Boynton, 372 Mass. 293, 295 (1977). Moreover, the motion to amend was filed several weeks after the hearing on the defendants' motion to dismiss. The proposed amended complaint significantly expanded the scope of the litigation, adding several new claims and defendants. In light of the futility of amendment, undue delay, and the prejudice to the opposing parties, we discern no abuse of discretion in the ruling. See Doherty v. Admiral's Flagship Condominium Trust, 80 Mass. App. Ct. 104, 112 (2011).

As Murphy correctly pointed out, inmate appeals of disciplinary decisions are governed by G. L. c. 249, § 4. See Grady v. Commissioner of Correction, 83 Mass. App. Ct. 126, 132-133 (2013). An aggrieved party seeking certiorari review must plead four elements: "(1) a judicial or quasi judicial proceeding (2) from which there is no other reasonably adequate remedy (3) to correct substantial error of law apparent on the record (4) that has resulted in manifest injustice to the plaintiff or an adverse impact on the real interests of the general public." Doucette v. Massachusetts Parole Bd., 86 Mass.

App. Ct. 531, 540 (2014), quoting from State Bd. of Retirement v. Woodward, 446 Mass. 698, 703-704 (2006).

Here, the allegations of Murphy's complaint were inadequate to state a proper cause of action for relief in the nature of certiorari. See Ibid. Even if the allegations stated a claim, the record did not reflect a substantial error of law that adversely affected Murphy's material rights. See Drayton v. Commissioner of Correction, 52 Mass. App. Ct. 135, 140 (2001).

Judgment affirmed.

By the Court (Green, Vuono & Henry, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: April 8, 2016.

[6] The panelists are listed in order of seniority.